

THOMAS KRAHN ET AL.
USSN 09/966,137
REPLY TO THE OFFICE ACTION DATED NOVEMBER 4, 2004
AMENDMENT OF APRIL 4, 2005

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

REMARKS

Applicants respectfully request reconsideration and allowance of this application in view of the amendments above and the following comments.

At the outset, Applicants acknowledge with appreciation the Examiner's indication that claims 9-21 and 24-32 have been allowed, and that claims 8 and 23 were allowable in substance. In response, Applicants have made claims 8 and 23 independent. Accordingly, Applicants seek an early notice that claims 8 and 23 have been allowed.

The sole substantive issue is the rejection of claims 7 and 22 under 35 USC § 102(b) as

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being anticipated by Wan et al. ("Wan"), *J. Immunol. Methods*, 162: 1-7 (1993). In response, Applicants respectfully request that the Examiner reconsider and withdraw this rejection. Regarding claim 7, Applicants have amended this claim to require "a fluorescent dye dissolved in the solution," in accordance with the specification at page 4, lines 20-21. Claim 22 has been amended to require the presence of "unbound fluorescent or luminescent ligand in the solution," in accordance with the specification at page 6, lines 13-14. Applicants do not believe the amendments to either claim 7 or to claim 22 introduce new matter. However, the Examiner concedes that Wan teaches the use of fluorescein conjugated *E. coli* particles. Such particles are neither dissolved fluorescent dye (as required by claim 7), nor unbound fluorescent ligand (as required by claim 22). Consequently, Wan does not anticipate claims 7 and 22 as amended.

In view of the foregoing, Applicants respectfully request that the Examiner reconsider and withdraw this rejection. An early notice that this rejection has been reconsidered and withdrawn is earnestly solicited.

Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Applicants also believe that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to

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telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

Respectfully submitted,

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By 

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Amendment under 37 CFR § 1.111 and the accompanying Petition for Extension of Time (18 pages total) are being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below:

Date: April 4, 2005

By: 

Kurt G. Briscoe